CHIA FOON SIAN & ANOR. v. LAM CHEW FAH & ANOR.

[O. C. J. (Whitton J.) August 5, 1955]

[Singapore — Suit No. 1127 of 1953]

Executors and Administrators — Action for accounts — Whether the authority of an administrator commences from the date of grant of letters of administration or from the date the grant is extracted — Executor de son tort — Whether administrator is bound by his own acts as executor de son tort.

This was an action by the administrators of the estate of one Lam Kup Fah (deceased) for an account of moneys belonging to the estate of the deceased in respect of a concern known as the Wing Foh Pawnshop in which the deceased and the defendants had been partners.

At the trial two points of law were raised (1) whether the legal authority of the administrator to deal with the estate of the deceased dates from the date of the grant of letters of administration or from the date when the grant is extracted; (2) whether and to what extent is an administrator bound by his own acts as executor *de son tort*.

Held: (1) the legal authority of an administrator is acquired on the grant of letters of administration; (2) an administrator is bound by such of his acts as executor *de son tort* which has been done for the benefit of the estate of the deceased.

[Editorial Note: In **Muthoo Karuppan Chitty v. Onan & Ors.**(1) where letters of administration had been granted, but the petitioner having not given the security nor extracted the letters, Hyndman-Jones C.J. decided that until security was given all further proceedings should be stayed. Adrian Clark J. in **Ibrahim Sah v. Zahara Bee**(2) was of the opinion that the grant of letters of administration gave title to the person but till extracted he had not the document of title; if and when he got the grant issued it related back.]

Cases referred to:—

(1) *Muthoo Karuppan Chitty v. Onan & Ors.* (Singapore Suit No. 688 of 1907 — unreported).

(2) *Ibrahim Sah v. Zahara Bee* (Singapore Suit 164 of 1936 — unreported).

(3) *Chia Teck Liang v. Tan Soo Khiang* (1936) M.L.J. 185.

(4) *Meyappa Chitty v. Supramaniam Chitty* (1916) 1 A.C. 603.

(5) *Woolley v. Clark* 5 B. & Ald. 744.

(6) *Flockton v. Bunning*, L.R. 8 Ch. App. 323 at 324.

ACTION FOR ACCOUNTS.

A. N. Mitra for the plaintiffs.

R. H. Green for the defendants.

Cur. Adv. Vult.

Whitton J.: — This case is brought by the administrators of the estate of one Lam Kup Fah, alias Lam Kup Hwa, who is presumed to have died on 15th July 1945, on which date he was taken away by the Japanese, as he has never been heard of since. The defendants are relatives of the deceased, and the main claim is for an account of all moneys belonging to the estate of the deceased in respect of a concern known as the Wing Foh Pawnshop, in which Lam Kup Fah and the defendants had been partners. The first plaintiff is the widow of the deceased. The second plaintiff, a brother of the first plaintiff, is but a shadowy figure in these proceedings, and for convenience I shall merely refer to the plaintiff, meaning the first plaintiff unless otherwise indicated.

There is no dispute as to the facts up to the end of 1946. It is also common ground that at the beginning of 1947 a family conference was held which was attended by the parties and also by certain other members of the Lam clan in the capacity of arbitrators and that it was determined at this meeting the interest of the deceased in the pawnshop as on 31st December 1946 amounted to $26,669.39. There is some dispute, however, as to what arrangements were made for the future of this money. It is agreed $13,000 went into the pawnshop as capital, $10,600 went on deposit account in the pawnshop (I am informed that to place deposits in pawnshops is a recognised form of investment in Singapore), $2,000 was debited against the plaintiff in respect of money she had drawn for personal expenses, $69.39 paid to her in cash, and I believe the plaintiff also admitted in cross-examination, although, unfortunately — since later in the hearing the point was questioned — I inadvertently omitted to make a note on the matter, the remaining $1,000 was left on deposit in the pawnshop in the plaintiff's name. The dispute as to this stage of the history of the matter is with regard to the $13,000, which the plaintiff says was put into the pawnshop on the basis it was agreed "to carry on the business as before", while the defendants maintain the plaintiff invested this money as capital in the pawnshop, although in the name of the second defendant, Lam Chit Foo. The three arbitrators support in general terms the plaintiff's assertion that it was agreed to carry on the business as before, although it is not suggested they were present when the actual disposal of this money was settled. For the next three years the business flourished. During this period the plaintiff drew steadily on the deposit account at a rate of $200 or $300 per month to meet her personal expenditure. At the end of the period, that is at the beginning of 1950, the $13,000 capital had drawn to itself $19,500 profit. A new pawnshop licence was obtained, by the second defendant, for the next three year period, and the two defendants carried on the business, though not in the same premises as

before. The capital investment of $13,000 was now increased to $20,000, and this money together with the money on deposit was left in the business. During the next three years the business had, according to the defendants, big losses and it closed down early in 1953. Apart from any question of these losses a major discrepancy in the stories of the parties is that the defendants allege the plaintiff requested the second defendant in August 1950 to withdraw $10,000 from the deposit account and invest it in a firm called Foh Mee Goldsmith, in which this defendant had become a partner, and that this was done, whereas the plaintiff totally denies making any request of the sort. This goldsmith's shop also incurred heavy losses and eventually was closed down.

In considering, to the extent it seems to me it may be necessary, the facts in dispute I would at this stage observe that none of the parties appeared to me entirely satisfactory witnesses. The plaintiff and the first defendant in particular did not seem to me to show up very well under cross-examination. Dealing first with the question of what arrangement was made with regard to the $13,000 I accept the plaintiff's version it was understood between the parties that there were to be the same partners as before, or, as she put it, that "they were to go on working under the same signboard." In other words, having reached a settlement as to the amount of the deceased's interests $13,000 was to continue in the business as capital in the same way as if he was still a living partner. I prefer the plaintiff's version on this part of the case because it is supported by the testimony of the arbitrators, all of whom on the whole favourably impressed me in the witness-box. One of them, Lam Soon Chin, said, "Lam Kup Fah was to be recognised as a continuing partner as before". It is my surmise that when the defendants entered into a deed of partnership concerning the business very shortly afterwards, at the beginning of February 1947, they had no intention of cheating the plaintiff but their attitude was that having dealt fairly according to their rights with the widow, it would be more convenient not to be troubled with her anymore as far as the administration of the business concerned, and the simplest way to achieve this would be to ignore her for formal purposes, treating her share in the capital as having been invested in the name of one of themselves. I think, however, the plaintiff probably soon learnt the $13,000 was being treated as being in the name of the second defendant as I am disposed to believe his evidence as to the handing of the document Ex. D2 to the plaintiff. In any case I think this issue is of secondary importance since the essential facts it was the deceased's money and it was invested in the pawnshop are not disputed. On the other main dispute of fact, as to whether it was at the plaintiff's request $10,000 was removed from the deposit account for investment in the goldsmith's shop venture, I consider the defence version as more probably the true one for the reasons I am about to state, and I find accordingly. As will be seen from the account appended to the defence of the first defendant, the correctness of which is, I think, otherwise not challenged on any detail except for one small item, this $10,000 is stated to have been withdrawn on the 1st August 1950. It is common ground that the plaintiff was employed in the pawnshop from January to July 1951. Under cross-examination the plaintiff was decidedly evasive in this part of her testimony, but she did admit that an account (Ex. D4) showing the balance in the deposit account at the end of 1950 was $10,870.13 was in her handwriting. She maintains she was no more than a copyist of the accounts, but the defendants say she was a book-keeper during the time she was working in the business. For one who, to use her own words, "can read and write a little Chinese" the plaintiff appeared to me to display a remarkably high standard of calligraphy, but even if she was only employed as a copyist, which I greatly doubt, I do not believe her story that the first time she heard about this $10,000 withdrawal was when her solicitors told her of it in 1952 or 1953, since the story seems to me to involve the implication she copied these accounts, which included a statement of her own periodical withdrawals from the deposit account as well as the very large item now in issue, without any realisation of the position shown by the accounts. From the impression I formed of her the plaintiff is too clever a woman for this to have happened. Moreover I do not think there is any evidence of any attempt on the part of the defendants to defraud the plaintiff, at least if one excludes without prejudice the possibility of undisclosed hidden profits, and it is hard to believe that if the defendants had formed any scheme fraudulently to deprive her of $10,000 in the Lam Kup Fah deposit account they would have boldly entered up the item in the account books, and then made the account books available for the plaintiff's inspection.

In turning to the legal aspects of the case it should be mentioned that Letters of Administration were granted to the plaintiff on 19th September 1947 and extracted on 18th August 1950. From this it is clear the plaintiff had no legal authority to deal with her deceased husband's estate at the beginning of 1947. The question whether such authority commenced on 19th September 1947 or on 18th August 1950 has been strongly argued before me. It is submitted on behalf

of the defendants that the earlier date is the correct one. There is not, apparently, any local decision on the point. Mr. Green's first argument is that the Grant of Letters of Administration, a document of record, must be taken to mean what it says, and to my mind the document says quite clearly that the plaintiff became an administrator of the estate on 19th September 1947. The unreported decisions in *Muthoo Karuppan Chitty v. Onan & Ors.*[1] and *Ibrahim Sah v. Zahara Bee*[2] of which Mr. Green has produced certified copies, appear, as far as they go, to support the view that the date of Grant is the material one. On the other hand in the Johore case *Chia Teck Liang v. Tan Soo Khiang*[3] it was held that when a Court makes an order that Letters of Administration shall issue to the petitioner, such an order does not constitute a "grant" within section 70 of the Probate and Administration Enactment (No. 22). Mills J. held the words in section 70 "grant the same under its seal" to be overriding. Section 2 of our Probate and Administration Ordinance defines Letters of Administration as "a grant under the seal of the Court issuing the same", and in view of the difference of the language I do not think the Johore case carries us much further. The plaintiff relies on *Meyappa Chitty v. Supramaniam Chitty*[4]. There in contrasting the position in this respect of an executor and an administrator it was stated (p. 609): "An administrator, on the other hand, derives title solely under his grant, and cannot, therefore, institute an action as administrator before he gets his grant". But in England, as appears from the evidence on the procedure there adduced at the present trial, there is no preliminary adjudication on a petition for administration as there is in Singapore, and I think that this diversity in procedure might be regarded as disposing of the English case as an authority for our purposes, were it not for the possible implication in the sentence quoted that one can be an administrator before one gets one's grant. If any doubt does arise from the language of this sentence I think it is dispelled by reference to the cited case of *Woolley v. Clark*[5] in which Abbott C.J. said (p. 745):—

> "There is a manifest distinction between the case of an administrator and an executor. An administrator derives his title wholly from the ecclesiastical Court. He has none until the letters of administration are granted, and the property of the deceased vests in him only from the time of the grant. An executor, on the other hand, derives his title from the will itself, and the property vests in him from the moment of the testator's death."

In the light of these considerations it seems to me the right view is that it is the act of the Court (performed in Singapore in uncontested petitions by the Registrar) which confers upon an administrator his capacity and title, and that while for various practical purposes it may be essential for the administrator to extract the grant this act does not itself confer status. From this conclusion I hold that the plaintiff acquired the character of administratrix on 19th September 1947.

The next question is what was the effect of any acts of the plaintiff in relation to the estate before 19th September 1947, and this is mainly of importance in connection with the family arrangement already referred to reached at the beginning of that year. Mr. Green submits that she was an "executor *de son tort*". This submission I consider correct (14 *Halsbury*, 2nd Edn. p. 177 s. 282). The point as to how far an administrator is bound by his own acts as "executor *de son tort*" is not one on which there appears to be any abundant authority (vide *Williams* on Executors and Administrators 13th Ed. p. 155), but at least it seems settled that the only acts in this category which can have binding effect are those which have been done for the benefit of the estate. On the evidence I think there is no ground for suggesting either the valuation settlement of the deceased's estate at $26,000 odd or the subsequent investment of $23,600 (on the basis that it was invested as belonging to the deceased's estate) were not for the benefit of the estate, and so I am prepared to hold that these transactions are binding on the plaintiff in her subsequently acquired capacity of administratrix. The disposal of the balance of $3,000 odd I fear it is impossible to approve by strict standards of administration, but as it appears to have been morally justifiable in the circumstances, and all concerned consented to it, I suggest it need not be taken into further consideration as far as the present claim for relief is concerned. Finally on this aspect of the case I would maintain it appears that for present purposes the act of one administrator binds the other (*Williams* 13th Ed. pp. 455–458).

Now with regard to the plaintiff's position in relation to the partnership I think it is clear the former partnership, to which the deceased belonged, was dissolved by his death in 1945, and that throughout the period with which we are concerned there existed the partnership of the two defendants to which Ex. D refers (vide *Lindley* on Partnership 11th Ed. p. 677). If the family arrangement was that the business should be carried on as before — the version I have accepted — I do not think there was anything in it, that is if the arrangement may have possessed any legal validity, which made the plaintiff a partner or sub-partner. Moreover if there was any provision in the arrangement which would have had this effect I do not think the defendants ever did give effect to it.

On these findings I do not think there can be any doubt the plaintiff is entitled to an account in respect

of some of the money at least of the deceased transferred to the new partnership formed on 5th February 1947. In respect of the $13,000, whatever the plaintiff may have been told about it from time to time, it seems to me no proper account of it, such as should be supplied to an administrator, has been rendered. Mr. Green invited the Court specifically to state the proportions of capital it finds to have existed. On the basis and I think it is the only reasonable one there is — that the deceased's share was $13,000 and that each of the defendants was credited with $40,000 under the partnership agreement I hold that of the $80,000 the proportions held by the estate of the deceased, defendant 1 and defendant 2 respectively were $13,000, $40,000, $27,000 up to the end of 1949, and from the beginning of 1950 onwards the proportions held by the estate and defendant 2 $20,000 each. Defendant 2 admits this increase of capital. I do not think the plaintiff's claim to a 3/10th share for the deceased can be supported. As to the $10,600 I consider the plaintiff has had an accurate account of the money up to the end of 1952 in the statement attached to the defence of defendant 1. I consider this account accurate in as much as it has not been challenged, except in respect of the item of $10,000, on which issue I have found against the plaintiff, and a small cash item of $37.84, and as it is corroborated by the Ex. D3 group of receipts, I do not think, therefore, any further account should be ordered in respect of this $10,000. As far as the $2,000 is concerned it seems quite clear that the plaintiff was perfectly satisfied when this sum was credited to the pawnshop against drawings previously made by her for household expenses, and as there is no further information she can reasonably want about it, I propose to make no order in respect of it either. On the other hand in respect of the $1,000 said to have been left in the pawnshop in the name of the plaintiff there appears to be no satisfactory record.

On the basis, then, that the plaintiff in her capacity of administratrix is bound by the settlement she accepted in the beginning of 1947 before acquiring such capacity I hold that she is entitled to accounts in respect of the $13,000 and the $1,000 for the period 5th February 1947 to 31st January 1953 when the pawnshop finally closed down, and I order accordingly. Such accounts shall *inter alia* specifically show all profits from the investment and/or deposit of these moneys in the Wing Foh Pawnshop. I also direct that there shall be an enquiry as to what would be proper sums to be allowed to the defendants in respect of their personal superintendence and management of the business of the partnership between 5th February 1947 and 31st January 1953, regard being had to any remuneration the defendants may already have actually drawn for these services. There will also be an enquiry, if either party so requests, whether any and if so what part of the profits on these two sums was earned otherwise than by the user of the partnership assets including goodwill.

I would add that I think Mr. Mitra is correct in saying that the plaintiff cannot be obliged to exercise election under section 42 of the Partnership Act, 1890, until these accounts have been taken. *Flockton v. Bunning*[6] appears to be authority for this proposition. I think it would be at least premature at this stage for me to order an enquiry as to which way it would benefit the plaintiffs to exercise their option, but the plaintiffs will be at liberty to apply for such a direction if they so wish.

The defendants counterclaim against the 1st plaintiff for payments made to her is as far as it may be adjudged that any such payments were not properly made, having not been made to the administrators of the estate. Such counterclaim is based, of course, on the possibility of the defendants having to pay money twice over. After reflection I am of the opinion that, since the present trial was fought on the basis of the merits of the plaintiff's claim for accounts and since no finding has been made as to the propriety or otherwise of the payments made by the defendants, it would be premature to give any decision on the counterclaim. I make no order on them, accordingly, beyond that the defendants will be at liberty to apply for the counterclaims to be entered on the list against the first plaintiff for hearing should the situation contemplated in them actually arise. It was conceded the counterclaim could not stand as far as the second plaintiff is concerned, and as far as he is concerned they are dismissed.

The question of costs is reserved.

Order accordingly.

Solicitors: *S. C. Goho & Co.; Braddell Bros.*

PUBLIC PROSECUTOR v. LAU TING KAI

[A. Cr. J. (Wilson J.) September 5, 1955]

[K. L. — Criminal Appeal No. 33 of 1955]

Betting Ordinance, 1953, s. 4(1) — Common Gaming Houses Ordinance, 1953, s. 4 — Using a place as common betting house — Access to the public — Assisting in carrying on a public lottery — "Tikam ekor" — Character lottery.